U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 08 2007

WAC 02 071 50112

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment based visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). The NOIR was based on a March 27, 1996 decision to deny the alien's earlier Form I-485 Application to Register Permanent Resident or Adjust Status based on a determination that the alien had entered into a marriage for the purpose of evading U.S. immigration laws. In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). On December 9, 2005, the petitioner filed a Form I-290B Notice of Appeal to the Administrative Appeals Office (AAO). The Form I-290B indicates that the petitioner seeks to appeal two separate decisions on two separate applications/petitions issued on two separate dates. The appeal was forwarded to this office. The appeal will be rejected.

The petitioner seeks classification pursuant to section 203(b)(2)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(B)(ii), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States because the petitioner will practice medicine in a designated health care professional shortage area.

The director approved the petition on November 23, 2002. On June 2, 2003, the director issued an NOIR, advising the petitioner that, based on a previous field investigation and conclusion that the petitioner had entered into a marriage for the purpose of evading immigration laws, a petition cannot be approved in his behalf pursuant to section 204(c) of the Act.[1] In response, the petitioner requested additional time to respond, asserting that the immigration judge overseeing the petitioner's removal proceedings would review the previous determination that the petitioner's marriage had not been bona fide. On July 17, 2003, the director issued a final notice of revocation, advising the petitioner of his right to file an appeal with this office within 18 days.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a

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[1] It is noted that on March 29, 2001, the District Director, Los Angeles, revoked a previously filed Form I-140 on the same basis. The previous revocation provided the self-petitioner with significant details regarding the results of the field investigation relating to the Form I-130 Petition for Alien Relative filed by [redacted] (spelling according to the petition, birth certificate and marriage certificate). Specifically, an interview with a [redacted] having the date of birth listed on the Form I-130 petition, advised that she was single, had not petitioned for the alien and had had her purse stolen several years previously. The District director noted that the information on the Form I-130 was limited to the information stolen from [redacted]. Specifically, the petition and Form G-325A purportedly signed by [redacted] omit her social security number. We further note that the insurance policy the petitioner took out for [redacted] also omits her social security number.

> denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). Finally, the realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Id.*

On November 17, 2003, the petitioner filed a Motion to Reopen the March 27, 1996 decision by the District Director, Los Angeles.[2] On November 19, 2004, the District director affirmed the March 27, 1996 decision. The petitioner then filed a motion to reconsider the November 19, 2004 decision. Once again, the District director upheld the March 27, 1996 decision in a new decision dated November 10, 2005.

On December 9, 2005, the petitioner filed the Form I-290B Notice of Appeal to the Administrative Appeals Office (AAO) at issue. The petitioner indicated that he was appealing "the decision dated: November 10, 2005; and (July 17, 2003)." In her brief, counsel states:

> This is an appeal from the decision of the District Director dated July 17, 2003 revoking Appellant/Petitioner's Form I-140 (Petition for Alien Worker) based on the district director's previous decision of March 27, 1996. Consequent to and as a challenge to the revocation of said I-140 petition, on November 17, 2003 Appellant/Petitioner filed a Motion to reopen the district director's previous decision of March 27, 1996 and a Motion to reconsider on December 2, 2004. This is also an appeal from the decision of the district director dated November 10, 2005.

First, the Service Center director, not the District director, issued the July 17, 2003 decision. Regardless, counsel cites no legal authority, and we known of none, that would allow the petitioner to appeal two separate decisions on two separate applications/petitions issued on two separate dates with a single Form I-290B and fee.

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[2] In support of the motion, the petitioner submitted a private investigation of [redacted] who the private investigator concluded is the same person as [redacted] The private investigator, while concluding that [redacted] was married to someone other than the petitioner, did connect her to the address where the field investigation took place. The private investigator did not, however, connect her to the address at which the alien allegedly resided with his wife. While the private investigator also investigated a social security number apparently provided to him by the alien, the Form I-130 and Form G-325A allegedly signed by [redacted] did not list any social security number. While the actual individual holding that security number does, according to the private investigator, have a criminal history (allegedly supporting the alien's claim to have left his wife due to her drug problems), the private investigator does not connect the holder of that social security number to the alien, the address where he allegedly lived with his wife or [redacted] other than through the alien's own self-serving claim that [redacted] used that social security number. Contrary to counsel's assertion, the private investigator did not discover that [redacted] had a criminal record. Ultimately, the private investigator reaches no conclusion as to whom the petitioner was actually married.

Regarding adjustment applications, the regulation at 8 C.F.R. § 245.2(a)(5)(ii) provides: "No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240." The regulation at 8 C.F.R. § 103.1(f)(3)(iii)(JJ)(as in effect on February 28, 2003) provides that the AAO has jurisdiction over adjustment applications "when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act."[3]

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii)(as in effect on February 28, 2003). As the jurisdiction over any appeal of the March 27, 1996 decision does not lie with the AAO, we must reject any appeal of that decision.

As stated above, however, the petitioner listed the receipt number for the Form I-140 on the Form I-290B Notice of Appeal and listed the final revocation date of July 17, 2003 as one of two decisions being appealed.

The appeal, however, was filed on December 9, 2005, nearly two and half years after the final revocation of the Form I-140 was rendered. According to the pertinent regulations, the appeal was not timely filed. Specifically, the regulation at 8 C.F.R. § 205.2(d) states that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The notice of revocation advised the petitioner of the 15-day deadline. Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal.[4] *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Service Center director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

As the appeal either seeks to appeal a matter that does not fall within the AAO's jurisdiction or was untimely filed, the appeal must be rejected. Should the Service Center director chose to consider the Form I-290B as a motion pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*), the director

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[3] Section 245(e) of the Act precludes the adjustment of an alien based on a marriage entered into during administrative of judicial proceedings regarding the alien's right to be admitted or remain in the United States. The March 27, 1996 decision, however, was based on Section 212(a)(6)(C)(i) of the Act, which provides that an alien who has sought to procure a visa through misrepresentation of a material fact is excludable.

[4] Moreover, this is not a case where the petitioner could not challenge the 2003 revocation of the Form I-140 without first seeking to reopen the 1996 decision despite the fact that the 2003 decision relies on the same field investigation discussed in the 1996 decision. Specifically, the Board of Immigration Appeals has held that a director should not give conclusive effect to determinations made in a prior proceeding, but, rather, should reach his own independent conclusion based on the evidence before him. *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990) (*citing Matter of F-*, 9 I&N Dec. 684 (BIA 1962).

should take into account that any reliance on adverse facts not communicated in the NOIR would need to form the basis of a new NOIR pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

ORDER: The appeal is rejected.